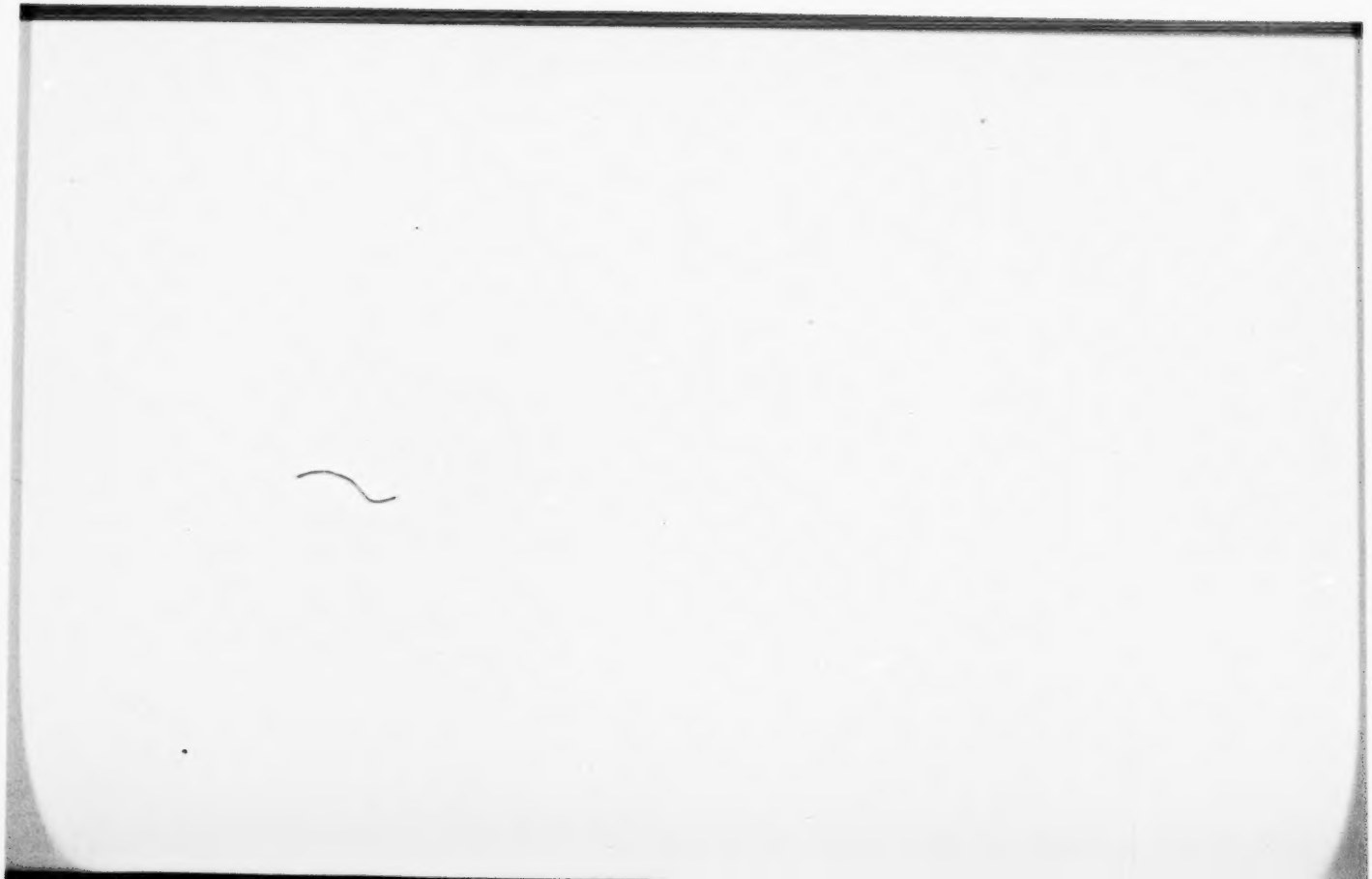


JAN 26 1944
CHARLES ELMORE CROPLEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. 583

GRAND RAPIDS FURNITURE COMPANY,
AN ILLINOIS CORPORATION,
Petitioner,

VS.

GRAND RAPIDS FURNITURE COMPANY,
A CORPORATION, ET AL.,
Respondents.

ANSWER OF RESPONDENTS AND BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

JOHN J. YOWELL,
69 West Washington Street,
Chicago 2, Illinois,
Counsel for Respondents.

STEPHEN F. DUNN,
Grand Rapids, Michigan,
Of Counsel.

PRINTED BY CHICAGO LAW PRINTING CO.



INDEX.

	PAGE
Statement of Facts	1
Summary of Argument	9
Conclusion	12

AUTHORITIES.

American Optometric Association v. Rithholz, 110 Fed. (2nd) 883. Cert. den. 307 U. S. 647	11
Gibbs v. Buck, 307 U. S. 66	10
Grand Rapids Furniture Co. v. Grand Rapids Furniture Co., et al., 127 Fed. (2nd) 245	9, 10
Harvey v. American Coal Company, 50 Fed. (2nd) 832, certiorari denied 248 U. S. 669	10
Indian Territory Oil & Gas Company v. Indian Territory Illuminating Oil Company, 95 Fed. (2nd) 711, certiorari denied 305 U. S. 607	10, 11
Lady Esther Limited v. Lady Esther Corset Shoppe, 317 Ill. App. 451	11

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. 583

GRAND RAPIDS FURNITURE COMPANY,
AN ILLINOIS CORPORATION,
Petitioner,

vs.

GRAND RAPIDS FURNITURE COMPANY,
A CORPORATION, ET AL.,
Respondents.

ANSWER OF RESPONDENTS AND BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

STATEMENT OF FACTS.

This additional statement of facts is made to supply omissions and to correct misstatements contained in the petition and supporting brief.

The evidence showed and the trial court found that one of the plaintiffs, Grand Rapids Furniture Company, a Michigan corporation, with its principal place of business in the City of Grand Rapids, has been engaged in the business of manufacturing and selling household furniture since 1907; that it has an investment of approximately $250,000, and that the volume of its sales in the Chicago

district has been from $40,000 to $50,000 per year to some 15 to 20 dealers (R. 26, 27, 46).

The evidence showed and the court found that the plaintiff, Furniture Manufacturers Association of Grand Rapids, Michigan, is an association of furniture manufacturers, including the other plaintiffs, and that all of the other plaintiffs are and for many years have been engaged in the City of Grand Rapids in the State of Michigan, in the business of manufacturing and selling household furniture in which business the plaintiffs have invested in excess of $8,000,000 in plants and equipment; that the investment of the plaintiffs in national advertising and the development of good will for Grand Rapids furniture is in excess of $1,750,000, and that the aggregate sales volume of the plaintiffs in the Chicago district is approximately $800,000 per year (R. 21-47).

The evidence showed and the court found that the City of Grand Rapids, Michigan, is a large and important center of the furniture industry in the United States, which fact is generally known to the public and that furniture manufactured in Grand Rapids has for many years enjoyed a widespread popularity, good will and demand throughout the United States and that the words "Grand Rapids furniture" have acquired in the trade a special significance; that furniture made in Grand Rapids is held by a large part of the purchasing public to be superior in design, workmanship and value to furniture usually produced elsewhere, and that among the purchasing public many prefer Grand Rapids furniture to furniture made elsewhere; that "Grand Rapids furniture" is and the public understands it to be furniture manufactured in the City of Grand Rapids, Michigan; and that by reason of the foregoing facts and the methods of merchandising followed by the plaintiffs, the plaintiffs have acquired the good will of the

furniture purchasing public and furniture dealers for Grand Rapids furniture of the value of several millions of dollars (R. 21, 22, 40, 47).

The evidence showed and the court found that the defendant Grand Rapids Furniture Company was organized in 1933 in Illinois by Maurice Schwartz, Dora Schwartz and Bertha Schwartz, and that Maurice Schwartz, Isadore Schwartz and Daniel Schwartz had previously operated a corporation as Grand Rapids Furniture Company but prior to the incorporation of the defendant corporation had changed the name of the previously organized company to Schwartz Furniture Company; that in 1934, Maurice Schwartz, Dora Schwartz and Bertha Schwartz organized an Illinois corporation under the name of Grand Rapids Storage and Furniture Company; that the defendants never had a factory in Grand Rapids, Michigan, were not connected with any concern in Grand Rapids, Michigan; and that there is nothing to show that they ever purchased or dealt in any Grand Rapids furniture (R. 23, 25, 44, 47).

The evidence showed and the court found that the defendants ran misleading advertisements in the Chicago newspapers containing fraudulent representations that they had a factory and that by purchasing from them money would be saved because the purchase was direct from their factory, thus saving the middleman's profit; that besides the statements in their advertising matter, the defendants falsely represented to customers that they had a factory at Grand Rapids, Michigan, and that the furniture handled by them was Grand Rapids furniture; that the defendants not only availed themselves of the good will of Grand Rapids furniture in the minds of the public, but by dishonest sales methods, such as delivering second hand furniture when customers thought they were purchasing new furniture, destroyed the confidence and respect of purchas-

ers for Grand Rapids furniture; that customers were actually led to believe that the defendant's stores in Chicago were merely outlets for merchandise manufactured by them in Grand Rapids, Michigan; that dissatisfied customers of the defendants addressed letters to Grand Rapids Furniture Company at Grand Rapids, Michigan, believing that they were making complaint to the main office or headquarters of the defendants (R. 29, 36, 27, 28, 48); that such letters were delivered to the plaintiff corporation, Grand Rapids Furniture Company, at Grand Rapids, Michigan, whose name the defendants had appropriated, and that a great number of such complaints were received by that company (R. 27, 28).

The trial court found that "It is evident that the defendant corporation was organized with the intent and for the purpose of deceiving the public and leading prospective purchasers to believe that said defendant had some connection with a Grand Rapids furniture factory and sold Grand Rapids furniture, and that such purchasers were deriving some benefit by purchasing direct from Grand Rapids; the defendant corporation was actually engaged in selling at retail cheap, inferior furniture, some of it being second-hand furniture. The defendant's vice president testified that it came from all over the country, and there is no evidence that any of it was manufactured in Grand Rapids" (R. 48). Six or seven hundred persons had filed complaints with the Chicago Better Business Bureau that they were dealt with unfairly by the defendants and a number of dissatisfied customers of the defendant corporation testified regarding the treatment they received at the hands of the defendants and representations that were made to them (R. 30-36, 48).

The trial court found that "With the exception of the vice president of the defendant corporation who was subpoenaed by the plaintiffs and called as an adverse witness,

none of the officers of the defendant corporation and none of the defendants appeared or testified. The individual defendants have operated stores under various names at various locations in the City of Chicago from time to time and it appears from a photograph in evidence that their last place of business was vacant at the time the photograph was taken and it was stated by counsel that the individual defendants are now in the State of California" (R. 48, 49).

In 1935, the defendant corporation signed an agreement promising the Chicago Better Business Bureau that it would discontinue 21 specific merchandising practices, among others, that "no claim will be made in advertising or selling that this company is a branch of or affiliated with the Grand Rapids Furniture Company of Grand Rapids, Michigan," and that "no claim will be made in advertising or selling that the furniture so advertised or sold is manufactured in Grand Rapids, Michigan, unless such be the fact" (R. 38, 49).

Subsequent to those promises, the defendants continued the practices which they promised to discontinue and the attorney for the defendant corporation, who was the only witness on behalf of the defendants, testified that subsequent to the agreement the Chicago newspapers, which had theretofore carried the advertisements of the defendant corporation, refused to accept its advertising. The great number of complaints against the defendants, as well as an investigation by the State's Attorney's office which was mentioned by the defendant's witness, were reported in the Report of the Chicago Better Business Bureau, a publication which was circulated among some three thousand business concerns in the Chicago district. These articles referred to the defendant corporation as "Grand Rapids Furniture Company," the name appropriated by the defendants (R. 43, 44, 50).

The court made further specific findings from evidence in the record that the defendants (*a*) falsely represented to the public that their store was a branch of the Grand Rapids Furniture Company of Grand Rapids, Michigan; (*b*) falsely represented to the public that their store was a sales outlet for a furniture factory at Grand Rapids, Michigan; (*c*) falsely represented to the public that their factory was at Grand Rapids, Michigan; (*d*) falsely represented to the public that the furniture sold by them was manufactured at Grand Rapids, Michigan; (*e*) falsely represented to the public that purchases of furniture from them were purchases of Grand Rapids furniture direct from the factory at Grand Rapids, Michigan; (*f*) engaged in false, fraudulent and misleading advertising; (*g*) substituted other furniture for the furniture purchased by their customers; (*h*) sold as Grand Rapids furniture inferior furniture at prices which gave to purchasers a false idea of the value of genuine Grand Rapids furniture; (*i*) engaged in each and all of the practices above mentioned, knowing of the existence of the plaintiff Grand Rapids Furniture Company, having mentioned said company in the stipulation above described and knowing that the name "Grand Rapids" was a common law trade name and of great value to the plaintiffs herein; (*j*) irreparably injured the plaintiffs by the use of the name "Grand Rapids" in making sales to members of the public and potential customers of one or more of the plaintiffs; (*k*) irreparably injured the plaintiffs by leading a large section of the public to believe that Grand Rapids furniture is a shoddy and inferior product and that those who sell Grand Rapids furniture are unreliable; (*l*) irreparably injured the good will which the plaintiffs have established in Chicago and throughout the country (R. 50, 51).

The evidence showed that the fraudulent practices of the defendants necessarily damaged the plaintiffs in three dif-

ferent ways: *First,* by advertising as the Grand Rapids Furniture Company selling furniture "direct from the factory" which they represented to be at Grand Rapids, Michigan, they appealed to a portion of the public who desired to buy Grand Rapids furniture; they sold furniture to such persons, many of whom would otherwise have purchased furniture manufactured by the plaintiffs and thus took a dishonest and fraudulent advantage of the good will built up by the plaintiffs over a period of years by the expenditure of more than $2,000,000 in national advertising; *second,* they destroyed in the minds of hundreds of people in the Chicago district their good will towards Grand Rapids furniture as a result of defendant's fraudulent acts and misrepresentations, the resulting unpopularity and the natural confusion in the assumption that the Grand Rapids Furniture Company which was guilty of such fraudulent practices was the Grand Rapids Furniture Company of Grand Rapids, Michigan; and, *third,* that the plaintiffs had a policy and practice of selling only to dealers and sold to some eighty to one hundred retail furniture dealers in the City of Chicago; that such policy had been an asset of great value to the plaintiff because dealers bought Grand Rapids furniture in the belief and with the understanding that the members of the general public could not make purchases direct from the factory and that people in the Chicago district who desired to buy Grand Rapids furniture would buy from them (R. 45, 27, 40).

The trial court found that the value of the matter in dispute exceeds the sum of $3,000, exclusive of interest and costs (Finding of Fact No. 2, R. 46); that the plaintiffs will be damaged in an amount greatly in excess of $3,000, exclusive of interest and costs if the products of the Grand Rapids furniture factories are confused with the products of other factories and their business methods are confused with the business methods of the defendants, and if the defendants continue in the use of the words "Grand

Rapids'' in connection with the sale of furniture (Finding of Fact No. 12, R. 51); that the plaintiff, Grand Rapids Furniture Company, will be damaged in an amount greatly in excess of $3,000, exclusive of interest and costs by the continued use by the defendants of the corporate name ''Grand Rapids Furniture Company'' which was patently adopted by the defendants for the purpose of carrying out the fraudulent purposes hereinabove described (Finding of Fact No. 13, R. 51); that the plaintiffs have acquired the good will of the furniture purchasing public and furniture dealers for Grand Rapids furniture of the value of several millions of dollars (Finding of Fact No. 6, R. 47), and that unless the injunction is made permanent the reputation, popularity and good will of Grand Rapids furniture manufactured and sold by plaintiffs will be irreparably injured (Finding of Fact No. 14, R. 51).

Attention is here directed to two out of the various misstatements in the petition and supporting brief, to-wit: the statement at page 29 that ''no attempt was made by the plaintiffs or any of them to show how much any one of them had invested in plant or equipment, or what the average annual sales of any one of them was'' (Cf. R. 26, 27); and the statement at page 47 that in the case of *American Optometric Association* v. *Ritholz*, 110 Federal (2d) 883, the court did not enjoin the defendant from the use of its corporate name. Cf. page 108 of the record in that case in this court, No. 986 (certiorari denied) showing the order enjoined the defendant ''from operating as a non-profit corporation under the name of American Optometric Association, or any similar or like name, or any name using the words 'American,' 'Optometric,' or 'Association,' or either of them, or any similar or like name, and from using or permitting to be used in any like manner such corporate name or corporate entity already existing, and from incorporating any organization using such names.''

SUMMARY OF ARGUMENT.

I. The permanent injunction decree entered after trial on the merits, was affirmed from the bench without opinion. The only question the Circuit Court of Appeals had to decide was whether or not the evidence supported the averments of the complaint. Its decision as to the sufficiency of the complaint and all other questions of law here sought to be reviewed, had previously been invoked and its judgment entered, on appeal from the temporary injunction order. The judgment of the Circuit Court of Appeals on these questions (*Grand Rapids Furniture Company, et al.*, v. *Grand Rapids Furniture Company,* 127 Fed. 2d, 245), was entered on April 16, 1942, and no petition for rehearing having been filed, became final on May 6, 1942, more than one year and eight months before the petition for certiorari was filed in this court. Except for the question as to whether the averments of the complaint were proved, all questions decided by the Circuit Court of Appeals upon which this court is asked to rule were decided not on October 8, 1943, but on April 16, 1942, and more than three months before this application was made.

II. The judgment of the Circuit Court of Appeals to which the petition purports to be directed is not encompassed within rule 38. It is neither (*a*) in conflict with the decision of any other Circuit Court of Appeals, nor (*b*) in

conflict with applicable local decisions, nor (*c*) in conflict with the applicable decisions of this court. It is not a decision of any question of local law nor of an important question of federal law which has not been decided by this court.

III. "What is here involved is the value of the right sought to be protected. In this case it is the trade name —a thing common to each of the appellees and indivisible among them, and of as large value to one alone as to the group * * * it is the good will—the right to the exclusive use of the name which is in danger, and the bare statement of the fact conclusively indicates a value many times larger than the jurisdictional amount." *Harvey* v. *American Coal Company* (C.C.A. 7th Circuit), 50 Fed. (2nd) 832, certiorari denied, 284 U. S. 669; *Glenwood Light and Water Company* v. *Mutual Light, Heat and Power Company,* 239 U. S. 121.

IV. Affirmance of the final decree was fully justified by the evidence, the trial court's findings of fact, the decisions of this court and the previous adjudication by the Circuit Court of Appeals. "The equities of this case are impressive and they loudly appeal to the conscience of the court." *Grand Rapids Furniture Co. et al.* v. *Grand Rapids Furniture Co.,* 127 Fed. (2) 245.

V. Plaintiffs have such a common interest in the right sought to be protected that it is enough that their interests collectively exceed the jurisdictional amount *Gibbs* v. *Buck,* 307 U. S. 66; *Harvey* v. *American Coal*

Company (C.C.A. 7th Cir.) 50 Federal 2d, 832, certiorari denied, 284 U. S. 669.

VI. The fact that the interest of one of the plaintiffs whose corporate name the defendants had adopted for the purpose of carrying out their fraudulent practices exceeded the jurisdictional amount was sufficient to give the court jurisdiction. *Gibbs* v. *Buck,* 307 U. S. 66.

VII. Actual market competition is not an essential element of unfair competition. *Indian Territory Oil & Gas Company* v. *Indian Territory Illuminating Oil Company,* 95 Fed. 2d, 711 (C.C.A. 10th Cir.) certiorari denied, 305 U. S. 607; *Lady Esther Limited* v. *Lady Esther Corset Shoppe,* 317 Ill. App. 451.

VIII. The form of the injunction decree is supported by ample precedents and is not unduly broad. *Indian Territory Oil & Gas Company* v. *Indiana Territory Illuminating Oil Company,* 95 Fed. 2d, 711, certiorari denied, 305 U. S. 60; *American Optometric Association* v. *Ritholz,* 101 Fed. 2d 883 (C.C.A. 7th Cir.), certiorari denied, 307 U. S. 647.

CONCLUSION.

No important question of public policy is involved in this case. The complaint presented a case cognizable by a federal court of equity; the court had jurisdiction; the evidence fully supported the trial court's findings of fact; the findings justified the decree; the decree was properly affirmed by the Circuit Court of Appeals. There is no merit in the petition, and this case is not a proper one for review by certiorari.

The respondents, therefore, respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

JOHN J. YOWELL,
69 West Washington Street,
Chicago, Illinois,
Counsel for Respondents.

STEPHEN F. DUNN,
Grand Rapids, Michigan,
Of Counsel.

CERTIFICATE OF COUNSEL.

I certify that I have personal knowledge of this litigation; that I have examined the foregoing answer of respondent and brief in opposition to the petition for certiorari which was prepared personally by me and that the statements of fact therein are true.

JOHN J. YOWELL.